

SIN: 4945.00-00
Internal Revenue Service

OP: E: EO: T: 4

199926051

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number

In Reference to:

Date: APR : 6 1999

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Dear Sir or Madam:

This is in reference to your letter of November 30, 1998, requesting advance approval of your grant-making procedures under section 4945(g) of the Internal Revenue Code.

You are exempt under section 501(c)(3) of the Code and have been classified as a private foundation within the meaning of section 509(a).

Your stated purposes, among others, are to promote and encourage knowledge and appreciation of the body of art created by B and her contributions to the world of art, and to encourage knowledge and appreciation of art in general, irrespective of its medium.

In furtherance of your purposes, you propose to assist visual artists work in new disciplines or media in order to improve or enhance their artistic skills or talents by offering grants to emerging, mid-career and mature visual artists who have a demonstrated track record in a particular medium or discipline and want to work in an area other than the one for which they are primarily recognized as artists. The grant payment will be made at the beginning of the one-year grant period and recipients will use the funds to work in a new area during that period. You propose to initially award approximately two or three grants each year in varying amounts up to x per grant. You may increase or decrease the number of grants awarded each year or vary the amounts of awards to recipients, based upon the number of qualified applicants the program attracts and the availability of resources. In each year, you will determine the maximum number of grants to be awarded that year.

You will solicit applicants by asking three or four professional artists who live and work in different areas of the country to nominate up to three individual artists with whose work and career they are personally familiar and who they believe would be appropriate recipients of the grants. The nominators will be selected on the basis of professionalism and esthetic and geographic diversity. You will then send applications to

402

nominated artists. Each applicant will be required to submit a resume describing his or her prior work, samples of his or her artwork, a description of proposed work in an area other than the one in which he or she is primarily recognized and an estimate of his or her budget. Applications are to be submitted no later than the date determined by you and set forth in the distributed applications.

The selection of proposed grantees from among the applicants will be made by a panel of jurors (the "selection panel") to be composed of at least 4 individuals selected by you on the basis of professionalism and esthetic and geographic diversity. Panel members change each year and no individual will be permitted to serve as a nominator and juror in the same year. An effort will be made to divide the grants among emerging, mid-career and mature artists. Your Board of Directors will review and make the final determinations of grant recipients after reviewing the selection panel's proposed grantees. The Board of Directors may accept any, all or none of the proposed grantees and determine the amounts to be awarded to each grantee.

Neither the nominators nor the individuals on the selection panel will be eligible to receive any grants from the proposed program for a period of 2 years after serving in such capacity, nor will they otherwise be in a position to derive a private benefit, directly or indirectly, if certain potential recipients are selected over others. No members of your Board of Directors and no officer or employee will be eligible to receive any grants from the proposed program. A grant recipient may not be nominated or receive a grant in subsequent years but may serve as a nominator or a member of the selection panel in subsequent years.

The group of eligible applicants described above will be sufficiently broad to fulfill educational purposes, and the group will be sufficiently large to constitute a charitable class. Moreover, the selection of individual grantees will be made by you on the basis of criteria reasonably related to the purposes of the grant, including, but not limited to: the merits of the application and supporting materials submitted by the applicant, the importance of the proposed project to the art world and the applicant's qualification to work on the proposed project given his or her previous experience.

As a condition of receiving a grant, each recipient will be required to agree in writing to use the grant funds for the stated purpose of the grant. You will require each grant recipient to provide at the conclusion of the one-year grant period, upon completion of the undertaking for which the grant

was made, a report describing the grantee's accomplishments with respect to the grant and accounting for the funds received (the "final report"). If the grantee fails to submit the final report within a reasonable time after it is due, or if you receive any information from the submitted report, or otherwise, that indicates that all or any part of a grant is not being used for the stated purpose of the grant, you will initiate an investigation.

If you determine that any part of a grant has been used for improper purposes, you will take all reasonable and appropriate steps to recover diverted grant funds or to insure the restoration of diverted funds and the dedication of other grant funds held by the grantee to the purposes being financed by the grant. These steps will include legal action where appropriate.

If you determine that any part of the grant has been used for improper purposes, you will (1) secure the grantee's assurance that all granted funds will be applied to the purposes of the grant and that future diversions will not occur, (2) require that funds which cannot be applied to the purposes of the grant be rebated to you and (3) require the grantee to take extraordinary precautions to prevent future diversions from occurring.

You will not award grants to any trustee, officer or employee or to any disqualified person within the meaning of section 4946(a)(1) or to any person involved in the peer-review process or to any member of the selection panel for any purpose inconsistent with the purposes described in section 170(c)(2)(B). Moreover, the grants are required to be awarded on an objective and nondiscriminatory basis without regard to race, color, religion, sex and employment status of the applicant or any relative of the applicant.

You will retain records pertaining to all grants to individuals. Such records will include: (1) all information secured to evaluate the qualification of grantees; (2) identification of grantees (including any relationship of any grantee to you sufficient to make such grantee a disqualified person; (3) specification of the amount and purpose of each grant; (4) follow-up information obtained in complying with the required supervision of grants to individuals and the investigation of jeopardized grants.

Section 4945 of the Code provides for the imposition of taxes on each taxable expenditure of a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of section 4945(g).

Section 4945(g)(3) of the Code provides, in part, that the provisions of section 4945(d)(3) will not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if the purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Foundation and Similar Excise Taxes Regulations provides that, in order to secure the advance approval required by section 4945(g), a private foundation must demonstrate to the satisfaction of the Commissioner that (1) its grant procedures includes an objective and non-discriminatory selection process; (2) this procedure is reasonably calculated to result in performance by grantees of the activities that the grants were intended to finance; and (3) the foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance. No single procedure or set of procedures is required.

Based upon the information submitted, and assuming your program will be conducted as proposed, with a view to providing objectivity and nondiscrimination in the awarding of grants, we rule that your procedures for the awarding of grants comply with the requirements of section 4945(g)(3) of the Code. Thus, expenditures made in accordance with these procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3) of the Code.

This ruling is conditioned on the understanding that there will be no material changes in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to creators, officers, directors, trustees, or members of the selection committee, or for a purpose inconsistent with the purposes described in section 170(c)(2)(B) of the Code.

Please note that this ruling is only applicable to grants awarded under your program as outlined above. Before you enter into any other programs involving grants to individuals you should submit a request for advance approval of that program.

405

We are informing your key District Director of this action. Please keep a copy of this ruling with your permanent records.

This ruling is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Gerald V. Sack

Gerald V. Sack
Chief, Exempt Organizations
Technical Branch 4